IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1849 OF 2004

Tejkumar Shantilal Lodha Petitioner
versus
M/s.Terkheda Chemicals Respondent

Mr.Ashok B. Tejane i/by Rajendra Jagtap for petitioner.

Mrs.Revati Mohite-Dore for respondents 1,3 to 6
Ms.M.M.Deshmukh, APP present.

ALONG WITH
CRIMINAL WRIT PETITION NO.1850 OF 2004

Jayshri Sanjaykumar Lodha Petitioner
versus
M/s.Terkheda Chemicals Respondent

Mr.A.Tejane i/by Rajendra Jagtap for petitioner.

Mrs.Seema Sarnaik for respondents 3 & 4.
Ms.M.M.Deshmukh, APP present.

ALONG WITH
CRIMINAL WRIT PETITION NO.1852 OF 2004

Milind Shantilal Tated Petitioner
versus
M/s.Terkheda Chemicals Respondent

Mr.Ashok B. Tejane i/by Rajendra Jagtap for petitioner.

Mrs.Revati Mohite-Dore for respondents 3 & 4
Ms.M.M.Deshmukh, APP present.

ALONG WITH
CRIMINAL WRIT PETITION NO.1854 OF 2004

Sanjaykumar Shantilal Lodha Petitioner
versus
M/s.Terkheda Chemicals Respondent

Mr.Ashok B. Tejure i/by Rajendra Jagtap for petitioner.

Mrs.Seema Sarnaik for respondents 3,5,6
Ms.M.M.Deshmukh, APP present.

ALONG WITH
CRIMINAL WRIT PETITION NO.1855 OF 2004

Lilabai Girdharilal Tatad Petitioner
versus
M/s.Terkheda Chemicals Respondent

Mr.Ashok B. Tanjane i/by Rajendra Jagtap for petitioner.

Mrs.Seema Sarnaik for respondents 3 to 6
Ms.M.M.Deshmukh, APP present.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 4th September 2006

PC :

1. These criminal writ petitions are at the instance of the original complainant who had challenged an order passed by the learned Magistrate upon complaints instituted by him alleging offences under sections 138 and 141 of the Negotiable Instruments Act, 1881 as amended.

2. It is not in dispute that the original accused nos.2 to 6 in each of these complaints had challenged the orders of issuance of process by the learned Magistrate by invoking this Court's jurisdiction under section 482 of the Code of Criminal Procedure. The challenge was to the orders wherein process was issued on the basis that the complaint disclosed, prima facie, that an offence punishable under the aforesaid provisions had been committed by the original accused nos.2 to 6.

3. The petitioner was a party to these petitions. The petitions proceeded on the basis that the complainant is not sure whether the entity with which the petitioners (respondents before me) were allegedly associated, was a partnership firm or a private limited company. Needless to state that this Court observed that if the accused are associated with the partnership firm, then the averments of the complaint would read accordingly. However, if it is a private limited company, then it is necessary to urge that the accused are, in some capacity or more particularly provided in the statute, associated with the day to day business

and conduct thereof. The averments being lacking, this Court exercised its inherent powers and proceeded to quash the complaint.

4. The complaint was against other accused. However, the original complainant thereupon sought to amend the complaint and urge that the accused-original petitioners before this Court be shown as Directors of the accused no.1 company. That application was rejected and the matter was carried in revision.

5. The revision application was dismissed by the learned Additional Sessions Judge relying upon this Court’s order which has gained finality. He was of the opinion that there is no question of circumventing those orders and now permitting the original complainant to amend the complaint is not permissible.

6. The revision was, therefore, dismissed.

7. After hearing the learned counsel appearing for the petitioner at length, in my view, the order of the Revisional Court neither suffers from any error apparent nor can be said to be perverse so as to call for interference in my

extraordinary and discretionary jurisdiction under Article 227 of the Constitution of India. So also, inherent powers cannot be exercised to assist a complainant who has on his own proceeded to institute the complaint with averments that the first respondent is a partnership firm. Accused nos.2 to 6 having succeeded before this Court and order as above remaining undisturbed, in my view, no case is made out for interference with the orders under challenge. The Revisional Court was right so also the learned Magistrate in refusing the amendment to the complaint. Petitions dismissed.

8. The judgement relied upon by the learned counsel of this Court reported in 2005(2)-Mh.L.J.-44 (Maan Agro Centre Vs. EID Parry (India) Ltd. and another) would not apply in this situation because there the case of the applicant was that the sole proprietary concern had issued the cheque which was dishonoured. In law, the status of a sole proprietary concern being well known, this Court found that the learned Magistrate was in error in not permitting the complainant to proceed on the basis that the sole proprietor and the sole proprietary concern were really one and the same. Before this Court

in the reported judgement, it could not be demonstrated that the Revisional Court which allowed the revision and set aside the order of the Magistrate, was in error. It is in that circumstances and in the back drop of such factual position that the judgement which is reported as above, came to be rendered. That is clearly distinguishable as far as present facts are concerned.

9. Needless to state that if the petitioner - original complainant has filed civil suit and therein proceeded to aver as well as allege that all the accused before the Magistrate including the firm/private limited company are jointly and severally liable to pay, as far as civil liability is concerned, I see no hindrance in the prosecution of the proceedings in that behalf or even in execution of the decree obtained in the same.

(S.C.DHARMADHIKARI, J.)